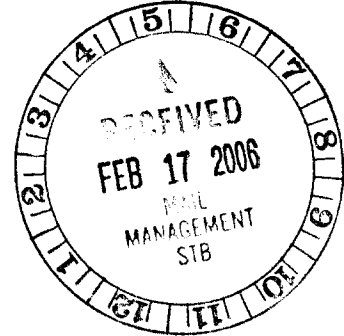


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February 17, 2006



Honorable Vernon A. Williams
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

***Re: STB Finance Docket No. 34798, City of Alameda—Acquisition
Exemption—Alameda Belt Line***

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the Responsive Pleading.

Please acknowledge receipt of this letter by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

If you have any questions, please contact me at (202) 295-4024.

Sincerely,


Sidney L. Strickland, Jr.

ENTERED
Office of Proceedings

FEB 17 2006

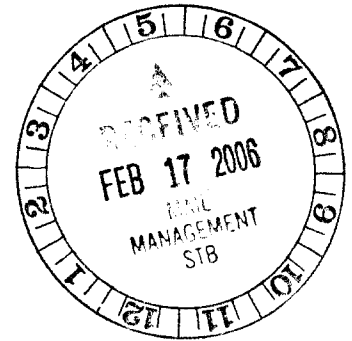
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34798

**CITY OF ALAMEDA
-- ACQUISITION EXEMPTION --
ALAMEDA BELT LINE**

RESPONSIVE PLEADING



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February 17, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34798

**CITY OF ALAMEDA
-- ACQUISITION EXEMPTION --
ALAMEDA BELT LINE**

RESPONSIVE PLEADING

The Alameda Belt Line ("ABL") submits this Responsive Pleading in response to the City of Alameda's ("City") Motion for Leave to File Limited Reply and Reply ("Reply") filed with the Surface Transportation Board ("Board") on January 30, 2006.

STATEMENT OF FACTS

In 1918, the City constructed a municipal belt line railroad along Clement Avenue, between Pearl and Grand Street, to serve the newly developing northern industrial area of the City. After receiving recommendations for extending the belt line to serve a large scale project involving California Packing Corporation and Alaska Packers Association, as well as other future industrial development, the City, on September 16, 1924, enacted an ordinance setting forth an agreement to sell the belt line railroad to the Western Pacific Railroad Company ("WP") and The Atchison, Topeka and Santa Fe Railway Company ("ATSF"), for the purposes of owning and operating the

municipal belt line railroad as a new corporation now known as the ABL.

The City, WP and ATSF formally executed an agreement on December 15, 1924. Pursuant to the agreement, City agreed to sell its belt line railroad to ABL for the sum of \$30,000. According to the City, paragraph 14 of the agreement, which is at issue in pending California State court proceedings, gave the City an option to repurchase the belt line railroad:

Fourteenth: Said City shall have the right at any time hereafter to purchase said belt line railroad including all extensions thereof, for a sum equal to the original cost, together with the cost of any and all additional investments and extensions made therein by said ALAMEDA BELT LINE, provided, that said City shall give at least one year's previous notice of its intention so to do by ordinance to that effect; and provided that at the same time it purchases from the parties of the first part, or either of them as the case may be, the branch railroad, extensions and spur tracks referred to in the twelfth section hereof.

It is agreed that said ALAMEDA BELT LINE will keep an accurate account of the cost of additional investments and extensions, and file a verified report thereof annually with the City Clerk of said City, similar to the report filed with the Railroad Commission. It is further agreed and understood that the term "investments" as herein used shall not include the cost of upkeep and repairs.

In July, 1925, the Railroad Commission of the State of California approved the acquisition. Subsequently, in January 1926, the Interstate Commerce Commission ("ICC") approved the acquisition of the Line by ATSF and WP. See Acquisition And Construction By Alameda Belt Line, 105 I.C.C. 349 (1926) and supplemented at 124 I.C.C. 465 (1927).

In 1998, the Board authorized the granting of local trackage rights by ABL, now owned by BNSF Railway Company ("BNSF") (as successor to ATSF)

and UP (as successor to WP), to UP over 1.80 miles of ABL's rail line between MP 0.00 near Clement Avenue and MP 1.80 near Sherman Street. See Union Pacific Railroad Company --Trackage Rights Exemption -- Alameda Belt Line F.D. 33682, served November 24, 1998.

In November 1999, based on staff recommendations, the Alameda City Council passed an ordinance giving notice to ABL that the City intended to exercise its option to repurchase the railroad and all "extensions thereof" on December 4, 2000, pursuant to the requirements of paragraph 14 of the parties' 1924 agreement.

ABL challenged the City's actions, asserting federal preemption as a defense to the City's arguments and has been engaged in a series of complex court proceedings before California trial courts and the California Court of Appeals. A California trial court initially granted ABL's motion for summary adjudication as to ABL's contention that paragraph 14 noted above was unenforceable because the option lacked sufficient specificity to comply with the statute of frauds, and that the fixed price option would be an illegal restraint on alienation. The trial court denied the City's cross motion for summary adjudication that paragraph 14 was enforceable. On appeal by City, a California Court of Appeals panel overturned the trial court order and remanded the matter to the trial court for further proceedings. See Alameda Belt Line v. City of Alameda, 113 Cal.App. 4th 15, 5 Cal.Rptr.3d 879 (2003). The matter remains pending in a state court.

The City and ABL are also presently involved in other litigation concerning two ballot measures approved by City of Alameda residents in November 2002, that relate to ABL properties (Measures D and E on the ballot). Measure D suspends the effect of Measure E until there is a final court judgement on whether the City must compensate ABL for the market value of ABL properties rezoned for different uses than presently used. Measure D also calls for further vote by the citizens of City if the City is to compensate ABL for the fair market value of the property. The thrust of Measure E is that, when fully implemented, the Land Use Element of the City's General Plan and zoning for specified ABL properties would change the present land use designation of the property from its present Medium-Density Residential, General Industry and Parks and Public to Parks and Open space to "O" (Open Space District). ABL claims, among other things, that City would be liable for the taking of private property in violation of the California and US Constitutions.

On December 9, 2005, the City filed with the Board a Notice of Exemption under 49 CFR 1150.31 ("Notice of Exemption") to acquire ABL's line of railroad located between M.P. 0.0 and M.P. 2.61 (the "Line"). The City readily admits that it filed the Notice of Exemption to trump ABL's federal preemption defenses in the Court proceedings discussed above. See Notice of Exemption at 6.

On December 14, 2005, ABL filed with the Board an Emergency Petition

to Stay. After the City responded on December 15, 2005 ("Initial Response"), the Board, on the same date, granted a housekeeping stay of the effective date of the exemption to allow time for the parties to provide additional information and for the Board to consider the issues presented in the stay request. The Board also authorized each party to file one supplementary pleading, to be filed by January 17, 2006.

On January 9, 2006, Encinal Real Estate, Inc. ("Encinal") filed with the Board a letter purportedly supporting the City's effort to acquire the Line. Encinal stated the Line has been used to serve its property and tenants, and that its tenants will require rail service in the future. See Encinal Letter at 1.

On January 17, 2006, ABL and City filed with the Board the filings requested by the Board's December 15 order.

On January 30, 2006, the City filed with the Board a Reply to ABL's Supplemental Pleading.

SUMMARY OF ARGUMENTS

ABL respectfully requests the Board strike City's January 30, 2006 Reply.

As discussed in Section I below, the City's Reply violates the Board's December 15, 2005, decision, and should be stricken from the record. Alternatively, ABL requests leave to respond to City's Reply, based on the arguments, set forth in Section II below: (1) the City is not, as it claims, filing its Notice of Exemption to offset ABL's state court preemption argument, but is, in fact, attempting to utilize the Notice of Exemption provisions to trump the Board's exclusive jurisdiction over the removal of rail carriers from an STB-jurisdictional rail line; (2) the City's expressed concern that any delay in this proceeding may delay the court case is disingenuous and unfounded; (3) and, the City's primary goal in acquiring the ABL line is for trail use and is not, as they claim, for multi-use purposes. Finally, ABL submits that the declaration of Barbara Hawkins raises more questions than gives clear answers to the use of the line in question and may require further board consideration of the issues Hawkins raises.

Argument I

City's January 30 Filing Violates the Board's December 15 Order.

The City's January 30 filing is in violation of Board's December 15 Decision.

That decision specifically authorized only one round of concurrent filings by the parties:

Each party shall have 30 days to file a supplementary pleading. Each party should address the claims made by the other in its initial pleading, provide any other information that may be relevant, and discuss the impact of any subsequent Board action on future rail service over the rail line in question.

The Board's order did not provide for reply comments. Indeed, there is no language what

so ever in the order to suggest that a reply was intended. The Board's order specifically requested that each party address and present all relevant information that would impact any subsequent Board action concerning future rail service over the line in question. Clearly, the Board expected both parties to put on the table all relevant information and not to hide-ball any relevant information concerning future rail service over the line. In this regard, ABL presented information to the Board concerning future trail use because there was relevant information that suggested such use. City chose not to do so for whatever reason. The City's failure to disclose such potential trail use did not somehow change the Board's order to provide for additional comments for such failure. The City's failure to disclose the trail use simply reflects the level of credibility of their January 17 and January 30 filings.

Accordingly, for the reasons noted above, the City's January 30 filing should be stricken for failure to comply with the Board's December 15 order.

Argument II

If the Board Does not Strike the City's January 30 Filing, the Board Should Accept ABL's Present Rresponse to that Filing

Pursuant to the Board's December 15 order, ABL submitted relevant information concerning future rail service over the line in question. Although there was information submitted by the City in its January 17 filing that differed from ABL's January 17 filing, ABL did not respond to that filing out of respect for the Board's restrictive December 15 order. Now, as noted above, the City, in violation of the December 15 order has filed a January 30 filing. In all fairness, if the Board does not strike the City's January 30 filing,

ABL should be permitted to make the following responses.

1. Preemption issue: The City once again argues that it filed the notice of exemption to offset the preemption arguments being raised by ABL in the court case. The City, however, continues to misunderstand and misstate the preemption issue. ABL is correctly arguing that the court may not remove ABL and UP from the rail line because such removal is within the exclusive jurisdiction of the Board. The City is inappropriately attempting to utilize the Notice of Exemption provisions under 49 C.F.R. 1150.31 to trump the Board's exclusive jurisdiction over the removal of rail carriers from an STB-jurisdictional rail line. If the Board allows the Notice to become effective, the City will undoubtedly argue before the Court that the Notice trumps ABL's preemption arguments, essentially asking the Court to remove ABL and UP from the line so that the City can take all of ABL's lines, yards, and other properties. In view of the complexity of the Court proceeding, one can not doubt that the Court may become confused as to their lack of authority over rail lines subject to the exclusive and plenary jurisdiction of the Board and thereby buy into a City argument that the Notice trumps ABL's preemption arguments before the court.

Undoubtedly, the STB should be careful not to issue any orders that would prompt inappropriate court actions without a careful review of all the facts surrounding the City's proposals before the Board.

2. Delay issue: The City's expressed concern that any delay in this proceeding may delay the court case is disingenuous at best. The City has known about the trial date

for some time and could have filed its Notice many months ago. Any delay is of the City's own making. Indeed, contained in the exhibits to the City's January 17 filing are: (1) a draft of the Notice of Exemption dated May 3, 2005 for the City to acquire the entire Alameda Belt line, including all extensions; and (2) minutes of the July 19, 2005 City Council meeting approving the filing of the Notice. For the City to now come before the Board and complain about delay is oxymoronic—they delay filing before the Board and now seek the most expeditious procedures to ramrod their land grab with minimal government oversight and expect the Board to hurry the process because there is a preexisting complex court proceeding involving the ABL track and properties. ABL, for its part, has responded promptly to the Actions presented by City and has respected all STB orders.

The Board should not abandon its appropriate oversight by permitting an inappropriate utilization of the Notice of Exemption process.

3. Use of ABL Corridor: The City's contention that it seeks to acquire the ABL line for multi-use purposes that include freight rail use is specious.

While the City may view the line adaptable to multi-use purposes, neither ABL nor UP share that view. For a number of reasons, the primary one being liability issues, ABL and UP would not consent to sharing the rail corridor with a trail and/or light rail. Therefore, if the City intends to use the corridor in whole or in part for a trail or light rail, the City will first have to remove ABL and UP. Moreover, and perhaps most importantly, there is nothing that supports any notion that the City truly intends to continue rail freight service. Indeed, after a careful combing of the materials submitted

by the City, including the 1991 plan and proposed amendments, one gleans that there is no true intent for the City to utilize the property in question for freight rail purposes. Moreover, whether the City intends to use the rail corridor exclusively for trail and light rail purposes or even freight services, it will only be able to do so by first removing ABL and UP. The City, however, cannot remove ABL and UP by virtue of filing a Notice under Section 1150.31. Rather, as ABL has previously explained, the City's objectives can only be pursued by the filing of an adverse abandonment application.

Argument III

The Declaration of Barbara Hawkins Raises More Questions Than Gives Clear Answers to the Use of the Line in Question and May Require Further Board Consideration of the Issues Hawkins Raises

Ms. Barbara Hawkins, City Engineer within the City of Alameda Public Works Department, (Hawkins) emphasizes in her "Declaration" that "the City's applicable General Plan" calls for the ABL to be used for freight rail transportation. Ms. Hawkins statement is apparently made to counter our finding that the City intends to use ABL's property for a trail. If Ms. Hawkins has the authority to represent the present intent of the City to continue to use ABL for freight service then she raises questions as to why the City is even before the Board to acquire the ABL line in question. ABL and its owners BNSF and UP stand ready to provide present freight service over the line in question. All the City needs to do is simply permit ABL to do what it is already legally obligated to do—provide rail service to present shippers on the line and if a time comes where the carrier fails to provide adequate service to shippers, City should then present such failures to the Board for a remedy.

Ms. Hawkins Declaration seems to admit that the July 15, 2004 "Draft: Cross Alameda Trail Vision" accurately reflects that the City supports the creation of a trail and that her Department of Public Works provided assistance in developing such planned use.

However, Ms. Hawkins distorts the true basis as to why the City and Rails -to-Trails Conservancy coordinated their efforts for a trail. Her statement suggests that it was so that the public input would "not be constrained by the needs or goals of the City." A close read of the applicable language shows that the primary reason for their coordination was more about maximizing the efficient use of their resources to obtain a trail, including public support for the trail, than excluding the City from efforts to have a trail:

In December 2003, the City of Alameda was awarded a Bay Trail Grant from the Association of Bay Area Governments (ABAG) to conduct a feasibility study of the Cross Alameda Trail. Shortly before the City was selected for this funding, the Rails - to-Trails Conservancy (RTC), a non-profit organization dedicated to converting abandoned railroad corridors to public trails, received funding from the San Francisco Foundation to develop a concept plan for the Cross Alameda Trail. To maximize the efficient use of resources, the City and RTC coordinated their respective efforts, with the RTC effort serving as the primary mechanisms for soliciting public input regarding the City's feasibility study. This framework also enabled the public involvement process to not be constrained by the needs or goals of the City which would be accounted for as part of the technical analysis. This report focuses on the results of the City's technical feasibility of constructing the Trail. See Final Report at p. I-1.

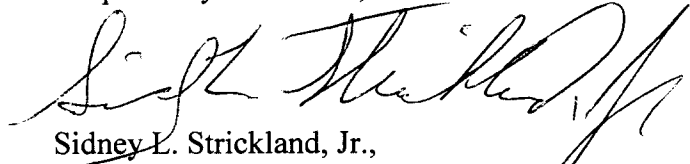
Ms. Hawkins' Declaration includes several passages that seem to suggest that the feasibility studies should not be viewed as showing any City intent to create a trail over the ABL property in issue or that the property could not be used for freight use in addition to the trail use; or that the City proposes any "interruption" to service provided by UP under existing trackage rights over APL lines. However, as the Board well knows, trails are voluntary mechanisms that can be used over rail corridors that could be used in the future for rail services that would otherwise be abandoned. This, of course, is voluntary for the rail carrier and as noted above, neither BNSF nor UP is presently interested in a trail, particularly one that would exist along with a freight line, particularly in view of the liability issues noted above.

Finally, Ms. Hawkins Declaration appears to be at odds with the City led voting initiatives noted in the background in which the City would rezone ABL's property for use that would not be conducive to freight rail use.

CONCLUSION

The City's January 30 filing violates the Board's December 15 Order and should be stricken. If the Board does not strike the City's January 30 Filing, the Board should accept ABL's present response to that filing. In addition, the Board should find that the Declaration of Barbara Hawkins raises more questions than gives clear answers as to the City's intended use of the line in question and may require further Board scrutiny and inquiry into the issues Hawkins presents in order to determine the disposition of this proceeding. A land grab through a manifestation of the Board's Notice of Exemption Process via misrepresentations and nondisclosures of uses the City intends for the property in issue should not be permitted. This would be a clear abuse of the Board's processes, particularly when there is an ongoing complex matter in the State Courts.

Respectfully Submitted,



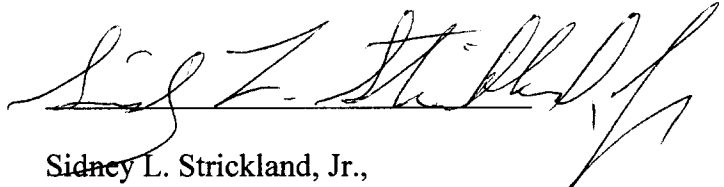
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CERTIFICATE OF SERVICE

Alameda Belt Line Railroad by and through its authorized representative, certify that on February 17, 2006, Petitioner sent copies of the foregoing Responsive Pleading by facsimile transmission and by mailing copies thereof by first-class mail to: Charles H. Montagne, Esq., 426 162nd Street, Seattle, Washington, 98177.



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